LIBRARY
UPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JAN 7 1969
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 792

SAUL I. BIRNBAUM,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR PETITIONER

HAROLD F. REIS
EDWARD P. TAPTICH
1343 H Street, N. W.
Washington, D. C. 20005

ALAN M. DERSHOWITZ
21 Robinson Street
Cambridge, Massachusetts 02138

Attorneys for Petitioner

Of Counsel:

WILNER, SCHEINER & GREELEY
1343 H Street, N. W.
Washington, D. C. 20005

INDEX

PAGE

I. Introduction 1

II. The Relevance of Saldana v. United States 5

III. The Retributive Nature of the Sentence 12

IV. The Tentative Nature of the Sentence 13

Conclusion 15

Table of Authorities

Cases:

Corey v. United States, 375 U. S. 169 (1963) 14, 15

Saldana v. United States, 365 U. S. 646 (1961) 5-12

Thomas v. United States, 369 F. 2d 941 (5th Cir. 1966) 11

United States v. Behrens, 375 U. S. 162 (1963) 14

United States v. Stromberg, 179 F. Supp. 278 (S.D.N.Y), aff'd 268 F. 2d 256 (2d Cir.), cert. denied, 361 U. S. 863 (1959) 14

United States v. Wiley, 267 F. 2d 453 (7th Cir. 1959) ..11-12

Watson v. Memphis, 373 U. S. 526 (1963) 16

Statute:

18 U. S. C. §4208(b) 13, 15

Federal Rules of Criminal Procedure:

Rule 35 ..... 14, 15

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 792

SAUL I. BIRNBAUM,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR PETITIONER

I.

Introduction.

The Solicitor General of the United States concedes that this case is "an unfortunate one, which should provide lessons for the future" (Brief in Opposition,[1] p. 16). He characterizes as "regrettable" Judge Cooper's comments at sentencing about the possibility of probation.[2] He regards it as "unfortunate" that petitioner was misled by

[1] Hereinafter cited as "Opp. p. ——".

[2] The Solicitor General states "[I]t is regrettable that Judge Cooper's extemporaneous comments at sentencing about the possibility of probation should have furnished the predicate for such a claim." (Opp. p. 14)

these comments into believing that he could avoid imprisonment by contributing his time and money to charitable organizations.[3] And he concedes that it would have been "wiser" for the Judge not to have raised petitioner's "hopes" of probation in the way that he did (*Id.* p. 9).[4] Yet despite these critical concessions and confessions, the Government asks this Court to deny the petition and affirm the challenged sentence for reasons which are neither responsive to the arguments raised in the petition nor relevant to the issues properly before this Court.

The Government seems to be arguing that even though Judge Cooper engaged in unfortunate, regrettable and unwise actions, the resulting sentence of one year should stand for three reasons: (1) because it is a "mild" or "lenient" sentence for the crime of which petitioner stands convicted (Opp. pp. 8, 9, 12); (2) because "the government official who received the bribe has served a term in prison" (*Id.* p. 15); and (3) because "a wealthy man" should not be able to "avoid a jail sentence by gifts of his money and time to charity" (*Ibid.*).

Whether or not a one-year sentence for the crime of bribery is or is not lenient[5] is, of course, not at issue here.

---

[3] The Government's brief concedes "[I]t is unfortunate that Judge Cooper was as explicit as he was as to what factors he would consider in exercising his right to reduce sentence." (Opp. p. 15)

[4] The Solicitor General confesses "We think it is unfortunate that Judge Cooper phrased his remarks in such a way that petitioner could interpret them as suggesting that he might escape the imprisonment which his conduct merited by contributions to charity of money or time. In our view, the wiser course would have been to refrain from raising such hopes." (Opp. p. 15)

[5] There is in fact nothing in the record to justify the assertion that the sentence was mild or lenient in the light of all the circum-

Petitioner is not seeking the kind of appellate review of the length of his sentence afforded by the courts of Great Britain. He is seeking relief from a sentence imposed in an improper and unlawful manner.[6] Nor is the sentence received by the agent who allegedly accepted the bribe appropriately relevant to this Court's decision. The government official involved pleaded guilty before trial, whereas petitioner exercised his right to stand trial. *United States* v. *Birnbaum*, 337 F. 2nd 490, 491 (2nd Cir. 1964). Obviously, it could not be argued that if prejudicial

---

stances. Judge Cooper did not so characterize it; nor did the Court of Appeals. Indeed, the former's remarks at the time sentence was imposed clearly indicated that he believed there existed "reasons, in mitigation of sentence." (Pet. p. 6, n. 4) Moreover, the imposition of a lesser sentence after the reversal on appeal is not evidence of leniency, but a common practice in recognition of the additional suffering or adversity undergone by the defendant.

[6] In attempting to establish that a one-year sentence was "lenient," the government conjures up a series of unproved charges and irresponsible innuendo. It alleges, for example, that petitioner's sale of the Shawano stock, which supposedly netted him $190,000 was "fraudulent" (Opp. p. 4). The government ought to know better, since on another occasion the prosecutor said: "I am not suggesting that Birnbaum did anything wrong in selling his Shawano shares to the public, I want to be clear on that. I am not suggesting that." (C.N. Ex. 5, pp. 2-5) Yet this is precisely what the government—without any basis in the record—is asking this Court to accept as a fact. In a similar vein, the government asserts that "petitioner's bribe of Simon did not appear to be an isolated transaction. . . ." (Opp. p. 4) Yet thorough investigation by the government failed to disclose any other instance of alleged wrongdoing by petitioner. Indeed, since the government refers to Simon, it is appropriate to add that Simon, the alleged receipient of the bribe, testified over and over again at voir dire that petitioner was not involved in the bribery (Appendix in the Court of Appeals in No. 30511 at p. A-261), but the Government avoided presenting that testimony to the jury. Instead, the Government relied for testimony on the issue on the assertions of confessed perjurors (id. at A-120, 216, 292) who though named as co-conspirators were never prosecuted.

error occurred during petitioner's trial there should be no reversal on the ground that "the government official who received the bribe has served a term in prison". Nor can it properly be argued that error occurring in the course of sentencing should go uncorrected for the same reason.

The third reason offered by the government for affirming petitioner's sentence is even more troublesome. The Solicitor General obviously disagrees with the original condition established by Judge Cooper. He thinks the Judge was wrong in offering petitioner an opportunity to avoid imprisonment by making substantial charitable contributions of time and money. For this reason, he is opposed to enforcing the arrangement made by Judge Cooper even though he concedes that "petitioner took substantial steps in an effort to meet the condition" (Opp. p. 2). This argument is, however, wholly improper in the present context of this case. It was Judge Cooper, and not the petitioner, who created the "appearance" objected to by the government. It was the Judge who volunteered that he "might" impose probation rather than imprisonment if petitioner gives "a hunk of yourself as well as your wealth" to charity. Now that petitioner has devoted much of his time, energy and resources to such activities in reliance upon the judicial admonition, it is entirely improper for the government to raise questions—for the first time—about the propriety of the offer made by Judge Cooper. Even if the original offer was improper, still it was made by a member of the judiciary and acted upon by a defendant. It must, therefore, be enforced by this Court, perhaps with a caveat that such offers ought not be made in the future. Indeed, if the "appearance" objected to by the government is to be prevented in the future it cannot be prevented by denying the writ

and by permitting the decision below to stand. Rather, such action can only have the opposite result, for the court of appeals rested that decision in part upon the likelihood "that in the judge's eyes appellant did not make the 'impressively convincing showing' that the judge felt was necessary before he could grant probation" (App. A, p. A-11; 402 F. 2d 24, 30), thereby clearing implying that a jail sentence might have been avoided by even greater gifts of "time and money to charity".

II.

The Relevance of *Saldana* v. *United States*.

The brief in opposition attempts to distinguish this case from *Saldana* v. *United States*, 365 U. S. 646 (1961), where this Court, at the suggestion of the Solicitor General enforced a judicial "promise" similar to the one at issue here.[7] But a careful reading of the record makes it clear that the only relevant distinctions between the cases make this one an even stronger candidate for judicial supervision and reversal.

In *Saldana* the defendant had pleaded guilty to two counts of a five count narcotics indictment, whereupon the presiding judge asked: "Would you like to have me make it five years on each Count and to run concurrently and waive time right now." (Transcript of Record in *Saldana* v.

---

[7] *Saldana* was a *per curiam* decision which was decided on the basis of the Court's independent examination of the record and "in the light of the Solicitor General's suggestion" made during oral argument. 346 U. S. 647. At the request of the Solicitor General, joined by counsel for petitioner, tapes of the oral argument were made available to counsel, but only after the petition was filed. The oral argument has been transcribed, and ten copies of the transcript (which is referred to hereinafter as "Tr. p. — ") have been lodged with the Clerk of the Court.

United States, No. 176 Oct. Term 1960, pp. 15-16) Defense counsel replied in the affirmative, but the government attorney objected to the imposition of sentence at that time on the ground that a co-defendant was scheduled to stand trial within a few days and that no final sentence should be imposed on Saldana until after the co-defendant's trial. The judge responded "I see. They are afraid that he might get on the stand at the other trial and take all the blame." (Id. p. 16) He thereupon granted the government's request to postpone sentencing, but reasurred the defendant that he "will keep [his] word and . . . will make it five years . . . " (Id. p. 17) (The obvious meaning of this, intended by the judge and understood by the defendant, was that he would make it five years if, and only if, Saldana conducted himself "properly" at his co-defenant's trial, see pp. 8-9, *infra.*)

As it turned out, the co-defendant became a fugitive and was not tried. Another district judge was then scheduled to impose sentence on Saldana but he refused to accept the guilty plea because "it smacks too much of having the appearance of a bargain."[8] (Transcript of Record in *Saldana* p. 24) The defendant then went to trial on all five counts, was convicted on four, and sentenced—by the second judge—to twenty years.

After affirmance by the Court of Appeals, this Court granted a writ of certiorari, despite the Solicitor General's opposition to such grant. In his brief on the merits, the

[8] The second trial judge also indicated that he did not consider himself "bound by any statement made by" the first judge, and the defense attorney conceded this, stating that: "I realize you cannot be and should not be bound by a statement of one of your fellow judges. And I would hesitate to even suggest to you that at the time of the sentence that you should be bound by that." (Transcript of Record in *Saldana,* p. 28)

Solicitor General vigorously defended the power of the second trial judge to require Saldana to stand trial on all five counts and also defended the power of the second judge to impose a sentence in excess of that which the first judge indicated he would impose. But despite his conclusion that "the legal rulings in this case were correct", the Solicitor General expressed his view that the case "presents a delicate problem in the administration of criminal justice aside from the legal correctness of the rulings involved." (Brief for United States in *Saldana,* pp. 28-29) The Solicitor General conceded that "[p]etitioner could hardly have avoided a deep sense of grievance" at what appeared to him to be a reneging on what he considered a promise. "The situation," in the Solicitor General's opinion, was "not a happy one." Accordingly, he invited the Court to consider

> "whether, irrespective of the legal issue of power, the natural grievance resulting from the difference between a promise of a five-year sentence and the resulting twenty-year sentence so departs from the appearance of even-handed justice before a district court of the United States that some relief ought to be granted under the supervisory power of this Court." Id. p. 31.

The Supreme Court accepted this invitation and reversed and remanded the case "[i]n the light of the Solicitor General's suggestion, and upon an independent examination of the record . . . ". It agreed with the Solicitor General that "the combination of circumstances . . . beginning with one judge's clearly expressed intention to impose a five-year sentence, and ending with another judge's imposition of a twenty-year sentence . . . was not consistent with that

regularity and fairness which should characterize the administration of justice in the federal courts." 365 U. S. at 647.

The brief in opposition seeks to distinguish *Saldana* from this case on the ground that in *Saldana* the trial judge "unequivocally promised [defendant] a sentence of five years imprisonment . . ." (Opp. pp. 11-12, n. 8). That is simply not the case. There was no unequivocal promise in *Saldana;* the record makes it clear that the judicial representation there, like here, was a conditional one. What the first judge meant in *Saldana* is that he would impose a five year sentence if *Saldana conducted himself properly at his co-defendant's trial.* He obviously reserved the right to reassess the situation and increase the sentence if Saldana attempted to take the entire blame at the subsequent trial. That was the reason why the government opposed the imposition of sentence before the trial and that was obviously the reason why the judge ruled in favor of the government's objection. Moreover, there was never any promise—conditional or otherwise—to dismiss the remaining three counts of the indictment. At most, "the record strongly suggests that the petitioner left the hearing . . . with the belief . . . that the three remaining counts would be dismissed." (Brief for United States in *Saldana,* p. 29) Similarly here, as found by the Court of Appeals, petitioner Birnbaum "interpreted the court's remarks to mean that if the conviction was sustained Birnbaum could, by following the guidelines in the court's remarks, avoid imprisonment and receive probation." (App. A, p. A-4). Moreover, this interpretation was considerably and reasonably strengthened as a result of the subsequent conversations involving Judge Cooper, Justice Heller and petitioner. The judicial state-

ments relied on in this case are, therefore, indistinguishable from those made in *Saldana.* And if, as the Solicitor General says, this Court "in effect, enforced the promise made by" the judge in *Saldana,* (Opp. p. 12, n. 8) then this Court should also enforce the similar promise here made.

There is another critical respect in which this case is similar to *Saldana.* In this case, the Solicitor General urges affirmance of the sentence because he disagrees with the merits of the original representation made by Judge Cooper: he does not believe that a person should be offered an opportunity to receive probation as a result of charitable contributions of time and money. It is important to note that the Solicitor General in *Saldana* had similar misgivings, yet he suggested reversal:

> ". . . even though I feel that this representation ought not to have been made, I say that with some dissidence (sic) about the District Judge, but I do not think that that was consistent with good practice, the representation that he would some day impose a life [sic, light] sentence. *Still it was made.* And there is, as with all of us, if the Court, the law does not keep its promises, this too tends to show some doubt about the integrity of the whole proceeding." (Transcript p. 16).

Similarly, whatever legitimate doubts one may have about the admonition expressed by Judge Cooper, "[s]till it was made" and petitioner complied with it.

Moreover, there are in this case a number of additional factors, not present in *Saldana,* which make this case a stronger one for reversal. In *Saldana,* the Solicitor General was asked whether "defendant and counsel in reliance [upon "the expectation of a five year sentence"] took any action which otherwise they would not have taken?" He

replied: "I don't think it could be said that there was any action they took in reliance on the promise" (Tr. at p. 30). In this case, petitioner, his counsel, and the charities took a number of important actions specifically in reliance on the expectation that petitioner would not go to jail if he contributed his time and money to charity. Petitioner contributed significant amounts of time and money in reliance on Judge Cooper's admonition. The charities permitted him to become involved in their work and, in at least one case, with their children. For more than 18 months, petitioner was subjected to a regimen dictated—albeit in general terms—by Judge Cooper, involving controls over petitioner's behavior far exceeding that which is imposed by conditions of bail, yet without the protections afforded by other forms of supervised release.[9] Other possible reliances are more speculative but equally important. For example, after a conviction in a difficult case, a deal is sometimes made between the defendant and the government, whereby the government agrees to recommend a probationary sentence if the defendant foregoes his appeal. Judge Cooper's statement in this case made it seem unnecessary for petitioner to explore this avenue, since Judge Cooper indicated

[9] In its opposition brief, the government unfairly suggests that contributions of money constituted petitioner's principal involvement with charity. (Opp. pp. 5, 16) As indicated in the petition —and in greater detail in the *amicus* brief of the charities—money was only a small part of petitioner's involvement. He spent the good part of each week for upwards of 18 months—more days than he would spend in prison if his sentence is affirmed—in rendering invaluable services to the charities. The government also suggests that "petitioner's assertions that Justice Heller became petitioner's unofficial probation officer may overstate the Justice's involvement somewhat." (Opp. p. 10) Petitioner submits that if anything, it understates it; there is hardly a jurisdiction in which official probation officers spend more time with their charges than Justice Heller spent with petitioner here.

that petitioner could have his appeal *and* his probation if he followed the admonition. In any event, it is clear that the reliances in this case were significantly greater than in *Saldana.*

There is another respect in which this case is stronger for reversal than *Saldana* was. In *Saldana,* the Solicitor General emphasized that the problem there was not caused by the government.

> "I do feel that this is a matter which the Government did not bring about, that the Government's position was not responsible for its arising and that it does concern the judicial administration rather than the conduct of a trial." (Tr. p. 27)
>
> • • • • •
>
> "They were not mistakes, if they were mistakes, which resulted from the government's position, or, indeed, neither were they urged upon the court by it." (Tr. p. 38)

In this case, as detailed in the petition at pp. 15-16, n. 18, the government was substantially responsible for what occurred here, because it repeatedly argued—as it was not entitled to do—that petitioner should go to jail because he protested his innocence.[10] Similarly, if, as the Solicitor

---

[10] There is one important lesson which the Government still has not learned from this case. It continues to argue before this Court —as it argued in every court below—that "petitioner did not commend himself for probation by refusing to acknowledge culpability even after full appellate review. . . ." This line of argument is, as pointed out in the petition, in direct conflict with the holdings of two circuits. In *Thomas* v. *United States,* 369 F. 2nd 941 (5th Cir. 1966), the Fifth Circuit explicitly held that a defendant could not be punished—or denied a benefit—for refusing to acknowledge his guilt. And in *United States* v. *Wiley,* 267 F. 2d 453 (7th Cir.

General now urges, Judge Cooper erred by prescribing an "unfortunate" and "regrettable" course, then the Government shares responsibility therefore because it stood mute when it should have spoken.

Finally, this Court took the action it did in *Saldana* despite the fact that it had been advised that a change in the calendar system in the district court where the case was tried "insures that what occurred in this case will not occur again". 365 U. S. at 647. Although the Solicitor General expresses the view that this case "should provide lessons for the future" (Opp. p. 16), no assurance against repetition has in fact been provided.

III.

The Retributive Nature of the Sentence.

The government maintains that there "is no basis for petitioner's assertion that Judge Cooper's refusal to reduce sentence 'was in retribution for the arguments made by counsel on appeal. * * *'" (Opp. p. 13) This argument comes with particularly poor grace from the government which itself urged Judge Cooper to consider the arguments made on appeal as a reason for refusing to reduce sentence (Pet. pp. 15-16). What the government seems to be

---

1959), the Seventh Circuit held that a defendant could not be refused probation because of his assertion of innocence. Yet despite these holdings—and despite the spirit of the Constitution which surely condemns punishing a man for asserting his innocence—the government continues to ask this Court to exact a judicial punishment from petitioner because he refuses to "acknowledge culpability". The government has obtained all it has a right to from petitioner under our system of justice: his total compliance with both the orders and suggestions of the courts; it cannot—and should not—be entitled to make him engage in the spectacle of public confession.

saying is: "we tried to persuade Judge Cooper to consider the arguments, but there is no evidence that we succeeded." Judge Cooper did, however, refuse to reduce the sentence after listening to the government's arguments and it seems more logical—and fairer—to assume that he was so influenced. Moreover, as was pointed out in the petition (Pet. pp. 31-32, n. 36), if the *coram nobis* petition had not been erroneously denied it would have been possible to establish as a fact that Judge Cooper's decision not to grant probation was motivated by the appellate argument critical of him.[11]

IV.

The Tentative Nature of the Sentence.

Petitioner devoted the major portion of his opening petition to the fundamental question: "Does a federal trial judge (not acting pursuant to 18 U.S.C. §4208(b)) have authority to impose on a convicted defendant a tentative sentence "for the present", reserving both imposition of final sentence and consideration of factors relevant to the sentence until after the defendant has exhausted his right to appellate review?" (Pet. pp. 3, 17-30) Petitioner demon-

[11] On two occasions in their brief in opposition, the Government indicates that no affidavit from Justice Heller was submitted to support petitioner's characterization of his role as "unofficial probation officer". (Opp. pp. 7, 10) As stated in the petition: "The affidavit states that one of petitioner's attorneys showed the relevant portion of the affidavit to Justice Heller who verified the accuracy of the description of the conversations." (Pet. at p. 9) In any event, the Court of Appeals accepted as a fact petitioner's version of these events. Finally, the events would have been established in open court had not petitioner's request for a hearing been erroneously denied. It is unfair, therefore, for the government to speak as if there were some doubt about the accuracy of these events; on the record of this case, this Court must accept them as true.

strated that the use of a "for the present" sentence of the kind imposed here endangers the freedom of the appellate process and specifically conflicts with the principles and holdings of this Court's recent decisions in *Corey* v. *United States,* 375 U.S. 169 (1963), and *United States* v. *Behrens,* 375 U.S. 162 (1963), as well as with the decisions of various United States Courts of Appeal (Pet. pp. 22-28). The opposition brief makes no attempt to dispute this line of argument. Instead, it is content to rely on the assertion that:

> "The sentence of imprisonment originally imposed was no more tentative than any other federal sentence which remains subject to reduction under rule 35 after the appellate process has been completed." (Opp. p. 14)

But there are a multitude of differences—critical differences of law and policy—between the routine operation of Rule 35 and the kind of "for the present" sentence at issue here. As this Court has said: "Rule 35 refers to the power of a court to reduce a sentence which has already become final in every respect," *United States* v. *Behrens, supra,* at 165. In imposing the original sentence, the judge must *intend* for it to be final. To be sure, he will understand that the sentence may subsequently be reduced if it is found to have been based on "misapprehension" as to the relevant sentencing criteria. But he will expect the sentence to remain unchanged unless "facts [are] presented . . . which were not before the Court at the time sentence was imposed." *United States* v. *Stromberg,* 179 F. Supp. 278, 280 (S.D. N.Y.), *aff'd,* 268 F.2d 256 (2nd Cir.), *cert. denied,* 361 U.S. 863 (1959). Thus, the true office of Rule 35 is to afford the trial judge an opportunity to correct a sentence which he intended would be final when he imposed it, but which now

appears excessive in light of factors not available to him at that time. This bears little similarity to Judge Cooper's action in this case. Here Judge Cooper never intended the one year "for the present" sentence to be final (or if he did, then he misled petitioner brutally). He never focused his mind on what an appropriate final sentence would be because he decided that this "was not the time to explore" concededly relevant aspects of petitioner's character. As the Court of Appeals found: "Judge Cooper unambiguously reserved the power to reassess the situation [after the appeal]." App. A, p. A-9. And he engaged in the improper practice of "dangling the possibility" of probation before the petitioner. The dangers inherent in this practice have been recognized by this Court in the *Corey* case *supra,* and are spelled out in detail in the petition. There are no similar dangers in the *proper* use of Rule 35 to reduce a sentence intended to be final when imposed. The dangers flow from the *improper* use of Rule 35 to circumvent the safeguards of §4208(b) by imposing a sentence *intended by the judge and understood by defendant* to be tentative and subject to reconsideration after the appeal. This is precisely what occurred here, and this is precisely the kind of distortion of Rule 35 that, unless stopped now, may turn a benevolent ameliorant into a vehicle of judicial abuse.

CONCLUSION

The Solicitor General concedes that the case is "unfortunate" and "regrettable" and that it "should provide lessons for the future" (Opp. p. 16). But he offers no suggestion as to how the "lessons" of this case can be communicated to bench and bar. Surely a few isolated sentences sprinkled through a brief in opposition to certiorari will

not bring home these lessons. In our system of government, lessons are provided for the lower courts by the appellate courts. Only if the petition in this case is granted will its important lessons be learned.

Even more fundamental to our system of justice is the principle that any deprivation of rights "calls for prompt rectification", not for future lessons. *Watson* v. *Memphis*, 373 U.S. 526, 532-33 (1963). "The rights here asserted are, like all such rights, *present* rights; they are not merely hopes to some *future* enjoyment . . . " *Id.* at 533 (emphasis original). The guarantees of our system "are warrants for the here and now [which must] be promptly fulfilled" *ibid.*, rather than "lessons for the future". If petitioner's rights were violated, as the Solicitor General seems to concede they were, then his sentence cannot be permitted to stand. The appropriate relief which he seeks should be granted.

Respectfully submitted,

HAROLD F. REIS
EDWARD P. TAPTICH
1343 H Street, N.W.
Washington, D.C. 20005

ALAN M. DERSHOWITZ
21 Robinson Street
Cambridge, Massachusetts 02138

Attorneys for Petitioner

Of Counsel:

WILNER, SCHEINER & GREELEY
1343 H Street, N.W.
Washington, D.C. 20005

January 7, 1969